

BILL ANALYSIS

C.S.H.B. 928

By: Krause

Federalism & Fiscal Responsibility, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that reconciling the tension created by the dual sovereignty of the state and the federal government is an ongoing and always-evolving predicament and that, while the supremacy clause in the U.S. Constitution states that federal law is superior to the laws of the state, the Ninth and Tenth Amendments to the U.S. Constitution are construed to reserve for the people and the states all power not prescribed to the federal government. These parties contend that while the U.S. Supreme Court has ruled that the role of constitutional nullification belongs expressly to the federal judiciary and not to the several states, legal precedents support the principle that the federal government may provide incentives to or penalties against a state to coerce it to act in a certain way, but it cannot simply require a state to act that way.

If the state is not required, and cannot be required, to assist the federal government in enforcing its laws, these parties further contend that the state could redefine the cooperative framework in which its resources (state and local law enforcement, agencies, employees, etc.) operate in relation to enforcement of federal firearm regulation to actively mitigate the impact of federal regulations it deems too restrictive, prohibitive, or punitive. C.S.H.B. 928 seeks to ensure that when federal overreach occurs, the federal government must utilize its own time, resources, and will to enter into the state and enforce its laws by designing a framework whereby state officials cooperate with a federal firearm regulation only when such a regulation also exists in state law.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 928 amends the Penal Code to prohibit a state agency or a political subdivision of this state, and a law enforcement officer or other person employed by a state agency or political subdivision of this state, from contracting with or in any other manner providing assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under Texas laws.

C.S.H.B. 928 prohibits a political subdivision of this state from receiving state grant funds if the political subdivision adopts a rule, order, ordinance, or policy under which it requires the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under Texas laws or, by consistent actions, requires such enforcement. The bill requires state grant funds for the political subdivision to be denied for the fiscal year following the year in which a final judicial determination in an action brought under the bill's provisions is made that the political subdivision has intentionally required such enforcement.

C.S.H.B. 928 authorizes any citizen residing in the jurisdiction of a political subdivision of this state to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the political subdivision has adopted a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation in violation of the bill's provisions or that, by consistent actions, requires such enforcement. The bill requires the citizen to include with a complaint the evidence the citizen has in support of the complaint.

C.S.H.B. 928 authorizes the attorney general upon determining that a complaint filed against a political subdivision is valid to file a petition for a writ of mandamus or to apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located in order to compel the political subdivision to comply with the bill's provisions and authorizes the attorney general to recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs. The bill provides that an appeal of a suit brought by the attorney general under the bill's provisions is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and requires the appellate court to render its final order or judgment with the least possible delay.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 928 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 1, Penal Code, is amended by adding Section 1.10 to read as follows:

Sec. 1.10. ENFORCEMENT OF CERTAIN FEDERAL LAWS REGULATING FIREARMS, FIREARM ACCESSORIES, AND FIREARM AMMUNITION. (a) In this section:

(1) "Firearm" has the meaning assigned by Section 46.01.

(2) "Firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. The term includes a detachable firearm magazine.

(b) An agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 1, Penal Code, is amended by adding Section 1.10 to read as follows:

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(1) "Firearm" has the meaning assigned by Section 46.01.

(2) "Firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. The term includes a detachable firearm magazine.

(b) An agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal

statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition that remains exclusively within the borders of this state if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under the laws of this state.

No equivalent provision.

statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under the laws of this state.

(c) A political subdivision of this state may not receive state grant funds if the political subdivision adopts a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). State grant funds for the political subdivision shall be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the political subdivision has intentionally required the enforcement of any federal statute, order, rule, or regulation described by Subsection (b).

(d) Any citizen residing in the jurisdiction of a political subdivision of this state may file a complaint with the attorney general if the citizen offers evidence to support an allegation that the political subdivision has adopted a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or that, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). The citizen must include with the complaint the evidence the citizen has that supports the complaint.

(e) If the attorney general determines that a complaint filed under Subsection (d) against a political subdivision of this state is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located to compel the political subdivision to comply with Subsection (b). The

attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) An appeal of a suit brought under Subsection (e) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.